Habeas Corpus and Commitment of the Mentally Ill

Most of the half-million patients in mental institutions in this country today are there under the order of some judicial or administrative tribunal. The interest of the state is said to be aroused because, in its character as *parens patriae* over persons of unsound mind,[1] the state has the duty to see that such persons receive the needed care and treatment in a hospital. Or, as it is more often expressed, the state must act in the public interest when the person is so mentally unstable as to endanger himself and society unless restrained.

The fact that commitment of mental patients has been considered a local matter under the federal constitution helps to explain the lack of uniformity in procedure among the several states. It is possible, however, to trace a general pattern of the commitment procedures in this country.[2] They are generally set in motion by a sworn petition filed in some designated court by persons whom the statutes may specify—near relatives, friends, or various officials. Usually this is accompanied by a certificate that the person is mentally ill and in need of confinement, sworn to by one or more qualified physicians, who commonly may not be related to the patient or connected with the institution to which it is proposed to commit him. Most states require by statute that notice of the proceedings be served on the alleged insane person, but even without express requirement, it is said that reasonable notice must be given.[3] Methods of dispensing with notice or specifying alternative persons to be notified, such as next of kin, etc., are sometimes provided if the tribunal is satisfied that personal service would be ineffective or detrimental to the person's health. In a few states, arrest on warrant can be made simultaneously with service of the complaint, by which order the sheriff can take the patient into custody and convey him to a named hospital, jail or court. Usually the statutes provide that court-appointed physicians must examine the mental condition of the person and report their findings to the court.

Almost all states provide for a hearing by law. Usually it is conducted before a judge or court, sometimes before a commission

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[1] People v. Janssen, 263 Ill. App. 101 (1931); State *ex rel.* Paxton v. Guinotte, 257 Mo. 1, 165 S.W. 718 (1914); Sporza v. German Savings Bank, 192 N.Y. 8, 84 N.E. 406 (1908).

[2] A summary of the statutory provisions of each state is found in Kempf, G. A., *Laws Pertaining to the Admission of Patients to Mental Hospitals throughout the United States* (Supplement No. 157, 1939), PUBLIC HEALTH REPORTS.

[3] *In re* Allen, 82 Vt. 365, 73 Atl. 1078 (1909).

in lunacy appointed by a court, or by an independent statutory commission. Often it is held in the judge's chambers instead of in open court. Jury trial is mandatory in two states and discretionary in several others. The alleged defective is generally required to be present at the hearing, nominally to enforce his right to hear the evidence and confront his accusers. On the theory that compulsory observance of these rights may do a mental defective more harm than good, a minority of states allow the court discretion to proceed without his presence. The execution of the commitment order varies in formality from methods similar to criminal processes to the informal procedures customary to any hospital entrance.

In almost every phase of the commitment procedure, the obvious lack of uniformity points up the definite breach between rules designed to effect traditional legal safeguards and those planned with medical consideration for the condition of the insane person. Although the problem of balancing these two ideals in order to develop the perfect pattern for commitment of mentally defective persons is an interesting and important one,[4] it is not within the scope of this comment. However, the discussion of the use of habeas corpus must necessarily touch on the larger policy issue at several points.

Habeas corpus has long been a recognied method of testing the validity of a commitment on grounds of insanity.[5] The writ may be issued on one of two grounds: first, where the claim is made that substantial irregularities not in accordance with law occurred in the original commitment procedure,[6] and second, where it is claimed that jurisdiction over the petitioner is ended because its basis has been removed and sanity restored, despite the refusal of the restraining authorities to recognize the fact.[7] The purpose of this comment is to discuss these uses and their present and future importance.

IRREGULARITIES IN THE ORIGINAL INSANITY HEARING

The list of irregularities in the original proceedings which have been considered sufficient to enable the petitioner to succeed in

[4] For discussions of the problem, see Weihofen and Overholser, *Commitment of the Mentally Ill*, 24 TEXAS L. R. 307 (1946); *Analysis of Legal and Medical Considerations in Commitment of the Mentally Ill*, 56 YALE L. J. 1178 (1947).

[5] *In re* Dowdell, 169 Mass. 387, 47 N.E. 1033 (1897); *In re* Moynihan, 332 Mo. 1022, 62 S.W. 2d 410 (1933); *In re* Chace, 26 R.I. 351, 58 Atl. 978 (1904); Byers v. Solier, 16 Wyo. 232, 93 Pac. 59 (1907).

[6] *Supra* note 5.

[7] Oliver v. Terrall, 152 La. 622, 94 So. 152 (1922); *In re* Clary, 149 Calif. 732, 87 Pac. 580 (1906); People v. Hendrick, 215 N.Y. 339, 109 N.E. 486 (1915); *In re* Palmer, 26 R.I. 486, 59 Atl. 746 (1904); Schutte v. Schutte, 86 W.Va. 701, 104 S.E. 108 (1920).

habeas corpus includes the lack of some form of the time-honored judicial mechanisms of notice[8] and hearing,[9] extended detention without judicial determination under the guise of medical examination,[10] and commitments ordered, although flagrantly lacking in proof.[11] These defects may be in contravention of statutory or judge-made law. In addition, the constitutionality of a statute authorizing informal commitment by certification of physicians without a judicial hearing may be challenged in habeas corpus.[12]

However, the writ will not lie to insure a jury trial where the state statutes do not authorize it and the right is held not to have existed prior to the adoption of the state constitution.[13] Federal due process does not require a trial by jury in insanity hearings because the right did not exist prior to the adoption of the Constitution of the United States.[14] The writ has been denied where an insanity hearing continued without defendant's attorney, who was unable to attend the final day of the hearing, the court declaring it to be an error chargeable only on appeal, and not a jurisdictional defect or denial of a fundamental right.[15] The United States Supreme Court has held that a person whose sanity is being tried and who has notice but does not attend the hearing cannot collaterally attack the adjudication.[16]

It is noted that in all these cases, the concept of the jurisdictional defect as a prerequisite to maintaining the writ of habeas corpus is strictly adhered to by the courts. While the requirement

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[8] *Ex parte* Schaeffer, 177 Okla. 464, 60 P. 2d 1037 (1936); Supreme Council v. Nicholson, 104 Md. 472, 65 Atl. 320 (1906); Joes v. Learned, 17 Colo. App. 76, 66 Pac. 1071 (1902); *In re* Wellman, 3 Kan. App. 100, 45 Pac. 726 (1896).

[9] Barry v. Hall, 98 F. 2d 222 (D.C. Cir. 1938); *Ex parte* Romero, 51 N.M. 205, 181 P. 2d 814 (1947); *In re* Boyett, 136 N.C. 415, 48 S.E. 789 (1904); *In re* Allen, *supra* note 3; *In re* Lambert, 134 Calif. 626, 66 Pac. 851 (1901).

[10] Allgor v. New Jersey State Hospital, 80 N.J. Eq. 386, 84 Atl. 711 (1912); *In re* Doyle, 16 R.I. 537, 18 Atl. 159 (1889); *In re* Tharpe, 64 Vt. 398, 24 Atl. 991 (1892); Byers v. Solier, 16 Wyo. 232, 93 Pac. 59 (1907).

[11] *Admission held insufficient proof*: *In re* Ryan, 291 Mich. 673, 289 N.W. 291 (1939); *In re* Phillipps, 158 Mich. 155, 122 N.W. 554 (1909). *Layman's Opinion insufficient*: *In re* Davis, 277 Mich. 89, 268 N.W. 822 (1936). *Petition insufficient*: *Ex parte* Nowack, 274 Mich. 544, 265 N.W. 459 (1936).

[12] King v. McLean Asylum, 64 Fed. 325 (1894); *In re* Lambert, 134 Calif. 626, 66 Pac. 851 (1901); State v. Kilbourne, 68 Minn. 320, 71 N.W. 396 (1897); *Ex parte* Dagley, 35 Okla. 180, 128 Pac. 699 (1912).

[13] State *ex rel.* Paxton v. Guinotte, *supra* note 1; *Ex parte* Dagley, *supra* note 12; White v. White, 108 Tex. 570, 196 S.W. 508 (1917).

[14] Montana Co. v. St. Louis Mining & Mill Co., 152 U.S. 160 (1893); *In re* Moynihan, *supra* note 5. See 91 A.L.R. 90 (1934).

[15] People v. Superintendent of Creedmoor State Hospital, 40 N.Y.S. 2d 84 (1943).

[16] Chaloner v. Sherman, 242 U.S. 455 (1916); Simon v. Craft, 182 U.S. 427 (1900).

has been stretched until it is meaningless in criminal cases,[17] the courts continue to limit the use of the writ in insanity cases to those in which a traditional defect of hearing or notice deprived the original court of jurisdiction and rendered the order void; or, phrased differently, jurisdictional defects in criminal cases apparently differ from those in insanity cases.

As stated, the defects of the denial of jury trial, counsel, and presence at hearing have come to be jurisdictional in criminal cases. By present judicial "fair trial" tests, seemingly applicable with equal force to civil and criminal proceedings, a person who is mentally defective should receive the maximum of judicial protection, since he cannot help himself. Upon these bases, the courts apparently could, if they wished, expand the concept of the jurisdictional defect in insanity cases. It seems, therefore, that the requirement in habeas corpus that defects be jurisdictional does not necessarily retard the growth of judicial protection in insanity cases. Rather, the character of the rights themselves may be different in the two kinds of cases.

The reason for the two sets of principles is said to be a "basic" difference between criminal and civil or statutory proceedings, but the mere statement of the rule does not answer the question. In terms of the "fair trial" concept, it is possible to argue that in the insanity hearing, a person does not need to be present or represented in order to protect his rights, since the commitment order depends chiefly on qualified medical reports given by unbiased officers of the court, rather than on the complicated criminal code and recollection of past events wrung from lay witnesses. In terms of the medical viewpoint, it is indeed better for the patient's health if he is neither notified nor forced to attend the hearing. These are the horns of the dilemma—legal safeguards designed for the protection of the individual actually are dangerous to his health. This is the point at which policy-makers must begin in planning the perfect commitment procedure.

TREATMENT IN HABEAS CORPUS OF IRREGULARITIES IN ORIGINAL PROCEEDINGS

Since the commitment on grounds of insanity is not a final order[18] and must be ended when sanity is recovered, some courts hesitate to inquire into the irregularities in the original insanity

[17] See *The Freedom Writ—The Expanding Use of Federal Habeas Corpus*, 61 HARV. L. R. 657, 660 (1948).

[18] Carroll v. Carroll, 16 Cal. 2d 761, 108 P. 2d 420 (1936); *In re* Basset, 68 Mich. 348, 36 N.W. 97 (1888); Evans v. Johnson, 39 W.Va. 299, 19 S.E. 623 (1894).

proceeding.[19] If they find the petitioner in habeas corpus is presently sane, he can be discharged without reference to the earlier hearing. If he is now insane, these courts refuse release, the present adjudication reconciling the defects in the earlier hearing. While in some measure realistic, this procedure tends to decrease the frequency of regularized commitment and encourage a disregard for personal liberty.

Most courts say, contrary to the above view, that the original proceeding is void, but because of the petitioner's present incapacity, he can be temporarily restrained, pending a new and regular hearing.[20] Although this view adds another case to busy court calendars and increases the expense to the state, it is probably warranted by its inherent justice and tendency toward systematizing the procedure.

HABEAS CORPUS UPON RECOVERY OF SANITY

As previously stated, confinement of a person on grounds of insanity is valid only until he recovers his mental health.[21] Periodic re-examination of patients and release procedures are usually provided by statute.[22] But there is no appeal from the decision of the release authorities as of right,[23] and generally, none is given by statute, nor can the original case be reopened on the grounds of recovery of sanity.[24] Consequently, habeas corpus would seem to be the only, and therefore a necessary, means of reviewing these decisions.

As in other areas where the writ of habeas corpus is applicable, the requirement of exhausting the available statutory remedies as a prerequisite to obtaining the writ is applied with varying strictness in different courts.[25] In Ohio, habeas corpus appears to be an unqualified alternative to the statutory remedy.[26]

From the medical viewpoint, however, this use of habeas corpus

[19] Barbee v. Kolb, 207 Ark. 227, 179 S.W. 2d 701 (1944); King v. McLean Asylum, 64 Fed. 331 (1894); People v. Chanler, 196 N.Y. 525, 89 N.E. 1109 (1909); Gresh's Case, 12 Pa. Co. 295 (1892); *In re* Palmer, 26 R.I. 486, 59 Atl. 746 (1904).

[20] Barry v. Hall, *supra* note 9; *Ex parte* Romero, *supra* note 9; *In re* Boyett, *supra* note 9; *In re* Allen, *supra* note 3; *Ex parte* Schaeffer, *supra* note 8; *In re* Moynihan, *supre* note 5.

[21] Northfoss v. Welch, 116 Minn. 62, 133 N.W. 82 (1911).

[22] *E.g.*, OHIO GEN. CODE §1890-63 (1938).

[23] *In re* Cash, 383 Ill. 409, 50 N.E. 2d 487 (1943); *In re* Cook, 218 N.C. 384, 11 S.E. 2d 142 (1940).

[24] State v. Linderholm, 95 Kan. 669, 149 Pac. 427 (1915).

[25] *In re* Ryan, 47 F. Supp. 1023 (Pa. 1942); *In re* Rainbolt, 64 Colo. 581, 172 Pac. 1068 (1918); Hamilton v. Henderson, 232 Mo. App. 1234, 117 S.W. 2d 379 (1938). *Contra*: Byers v. Solier, *supra* note 5.

[26] Yankulov v. Bushong, 80 Ohio App. 497, 77 N.E. 2d 88 (1945).

has undesirable elements. The impecunious petitioner seeking evidence to support his claim of recovered health must turn to state medical authorities, who may be suspected of bias because of their additional role as defendants. To give such a petitioner an independent resource, the Court of Appeals of the District of Columbia has extended the opportunity of opinion by a court-appointed physician.[27] Even more difficult is the situation caused by having the hospital doctors appear against the petitioner under the adverse circumstances of the habeas corpus hearing. Medical men call it extremely undesirable, since is destroys the physician-patient relationship so necessary to further aid in the patient's recovery.[28]

Treatment of the Present Sanity Issue

In most jurisdictions, the court in habeas corpus has the authority to render a direct decision as to the petitioner's sanity in either of the two uses of the writ.[29] Contrary to this procedure, the courts of the District of Columbia will not render this decision, but only treat the writ of habeas corpus as a means of initiating action for re-examination of the petitioner by the statutory release authorities.[30] This view is apparently based on the theory that the court is not as capable of rendering a decision on sanity as are the experts comprising the release authority. A great burden of habeas corpus cases in the District of Columbia in recent years may have played a greater part in the holding. It may be pointed out that under this view, the petitioner does not have the same opportunity for independent decision that he has under the majority rule, and while the judges are not medically qualified, they can seek expert help in the habeas corpus action as well as in any other.

Conclusion

As a means of independent relief, habeas corpus is serving a useful purpose in the present legal machinery of the insanity commitment. Moreover, if the medical viewpoint succeeds in influencing changes in the commitment procedure which eliminate some present legal safeguards, habeas corpus will increase in importance as an ultimate safeguard.

Nevertheless, there are weaknesses in the form of this relief. Since the writ is only a collateral attack on the commitment order,

[27] De Marcos v. Overholser, 137 F. 2d 698 (D.C. Cir. 1943).

[28] Weihofen and Overholser, *supra* note 4, at 335.

[29] *In re* Ryman, 139 Pa. Super. 212, 11 A. 2d 677 (1940); *In re* Buchanan, 129 Calif. 330, 61 Pac. 1120 (1900); People *ex rel.* Peabody v. Chandler, 196 N.Y. 525, 89 N.E. 1109 (1907); Northfoss v. Welch, *supra*, note 21.

[30] Dorsey v. Gill, 148 F. 2d 857 (D.C. Cir. 1945); Barry v. Hall, *supra*, note 9.

it will never be the complete remedy for an improper adjudication of insanity. In addition, even if granted, it does not wipe the bad adjudication from the records. Medical men would minimize this, calling it only a record of treatment but failing to consider public reaction to the proceedings, as well as the continued evidentiary use of the adjudication in other cases in which the person's sanity might be in issue.

As an alternative to habeas corpus, the petitioner may seek to have the commitment order set aside. Since the jurisdiction of the committing court generally continues until the patient has recovered mental health,[31] this court has a continuing power to correct errors in its proceedings,[32] except to the extent that the doctrine of laches operates.[33] The grounds for setting aside a commitment order include not only the substantial irregularities recognized in the habeas corpus action but all errors generally remediable by appeal.[34] Although this remedy lacks some of the independent and continuing nature of habeas corpus, it is a more complete relief to this extent. Consequently, it might be desirable to expand it to replace the existing remedy of habeas corpus.

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[31] Heckman v. Adams, 50 Ohio St. 305, 34 N.E. 155 (1893).

[32] Bliss v. Bliss, 133 Md. 61, 104 Atl. 467 (1918); *In re* Weaver, 116 Pa. 225, 9 Atl. 323 (1887); Hamilton v. Henderson, *supra*, note 25.

[33] Shafer v. Shafer, 181 Ind. 244, 104 N.E. 507 (1914); Coot v. Willett, 93 Mich. 304, 53 N.W. 395 (1892).

[34] 44 C.J.S., INSANE PERSONS, 85 (1945).